

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 77

HOUSE BILL 2355

AN ACT

AMENDING SECTIONS 34-201 AND 34-610, ARIZONA REVISED STATUTES; RELATING TO
BIDS AND ESTIMATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-201, Arizona Revised Statutes, is amended to
3 read:

4 34-201. Notice of intention to receive bids and enter contract;
5 procedure; doing work without advertising for bids;
6 county compliance

7 A. Except as provided in subsections B through F G and K L of this
8 section, every agent shall, upon acceptance and approval of the working
9 drawings and specifications, publish a notice to contractors of intention to
10 receive bids and contract for the proposed work, and stating:

11 1. The nature of the work required, the type, purpose and location of
12 the proposed building, and where the plans, specifications and full
13 information as to the proposed work may be obtained.

14 2. That contractors desiring to submit proposals may obtain copies of
15 full or partial sets of plans and specifications for estimate on request or
16 by appointment. The return of such plans and specifications shall be
17 guaranteed by a deposit of a designated amount which shall be refunded on
18 return of the plans and specifications in good order.

19 3. That every proposal shall be accompanied by a certified check,
20 cashier's check or surety bond for ten per cent of the amount of the bid
21 included in the proposal as a guarantee that the contractor will enter into
22 a contract to perform the proposal in accordance with the plans and
23 specifications. Notwithstanding the provisions of any other statute, the
24 surety bond shall be executed solely by a surety company or companies holding
25 a certificate of authority to transact surety business in this state issued
26 by the director of the department of insurance pursuant to title 20, chapter
27 2, article 1. The surety bond shall not be executed by an individual surety
28 or sureties, even if the requirements of section 7-101 are satisfied. The
29 certified check, cashier's check or surety bond shall be returned to the
30 contractors whose proposals are not accepted, and to the successful
31 contractor upon the execution of a satisfactory bond and contract as provided
32 in this article. The conditions and provisions of the surety bid bond
33 regarding the surety's obligations shall follow the following form:

34 Now, therefore, if the obligee accepts the proposal of the
35 principal and the principal enters into a contract with the
36 obligee in accordance with the terms of the proposal and gives
37 the bonds and certificates of insurance as specified in the
38 standard specifications with good and sufficient surety for the
39 faithful performance of the contract and for the prompt payment
40 of labor and materials furnished in the prosecution of the
41 contract, or in the event of the failure of the principal to
42 enter into the contract and give the bonds and certificates of
43 insurance, if the principal pays to the obligee the difference
44 not to exceed the penalty of the bond between the amount
45 specified in the proposal and such larger amount for which the

1 obligee may in good faith contract with another party to perform
2 the work covered by the proposal then this obligation is void.
3 Otherwise it remains in full force and effect provided, however,
4 that this bond is executed pursuant to the provisions of section
5 34-201, Arizona Revised Statutes, and all liabilities on this
6 bond shall be determined in accordance with the provisions of
7 the section to the extent as if it were copied at length herein.

8 4. That the right is reserved to reject any or all proposals or to
9 withhold the award for any reason the agent determines.

10 B. If the agent believes that any construction, building addition or
11 alteration contemplated at a public institution can be advantageously done
12 by the inmates thereof OF THE PUBLIC INSTITUTION and regularly employed help,
13 the agent may cause the work to be done without advertising for bids.

14 C. Any building, structure, addition or alteration may be constructed
15 either with or without the use of the agent's regularly employed personnel
16 without advertising for bids provided that the total cost of the work,
17 excluding materials and equipment previously acquired by bid, does not
18 exceed:

19 1. In fiscal year 1994-1995, fourteen thousand dollars.

20 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
21 amount provided in paragraph 1 of this subsection adjusted by the annual
22 percentage change in the GDP price deflator as defined in section 41-563,
23 ~~subsection E.~~

24 D. Notwithstanding the provisions of subsection C of this section, any
25 street, road, bridge, water or sewer work, other than a water or sewer
26 treatment plant or building, may be constructed either with or without the
27 use of the agent's regularly employed personnel without advertising for bids
28 provided that the total cost of the work does not exceed:

29 1. In fiscal year 1994-1995, one hundred fifty thousand dollars.

30 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
31 amount provided in paragraph 1 of this subsection adjusted by the annual
32 percentage change in the GDP price deflator as defined in section 41-563,
33 ~~subsection E.~~

34 E. FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION, THE TOTAL COST
35 OF WATER OR SEWER WORK DOES NOT INCLUDE SERVICES PROVIDED BY VOLUNTEERS OR
36 DONATIONS MADE FOR THE WATER OR SEWER PROJECT.

37 ~~E.~~ F. Notwithstanding the provisions of this section, an agent may
38 construct, reconstruct, install or repair a natural gas or electric utility
39 and distribution system, owned or operated by such agent, with regularly
40 employed personnel of the agent without advertising for bids, unless
41 otherwise prohibited by charter or ordinance.

42 ~~F.~~ G. A contribution by an agent for the financing of public
43 infrastructure made pursuant to a development agreement is exempt from the
44 provisions of this section if such contribution for any single development
45 does not exceed:

1 1. In fiscal year 1994-1995, one hundred thousand dollars.

2 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
3 amount provided in paragraph 1 of this subsection adjusted by the annual
4 percentage change in the GDP price deflator as defined in section 41-563;
5 subsection E.

6 ~~G.~~ H. In addition to other state or local requirements relating to
7 the publication of bids, each agent shall provide at least one set of all
8 plans and specifications to any construction news reporting service that
9 files an annual request with the agent. For the purposes of this subsection,
10 "construction news reporting service" means a service that researches,
11 gathers and disseminates news and reports either in print or electronically,
12 on at least a weekly basis for building projects, construction bids, the
13 purchasing of materials, supplies or services and other construction bidding
14 or planned activity to the allied construction industry. The allied
15 construction industry includes both general and specialty contractors,
16 builders, material and service suppliers, architects and engineers, owners,
17 developers and government agencies.

18 ~~H.~~ I. Any construction by a county under this section shall comply
19 with the uniform accounting system prescribed for counties by the auditor
20 general under section 41-1279.21. Any construction by a city or town under
21 this section shall comply with generally accepted accounting principles.

22 ~~I.~~ J. Any construction, building addition or alteration project which
23 is financed by monies of this state or its political subdivisions shall not
24 use endangered wood species unless an exemption is granted by the director
25 of the department of administration. The director shall only grant an
26 exemption if the use of endangered wood species is deemed necessary for
27 historical restoration or to repair existing facilities and the use of any
28 substitute material is not practical. Any lease-purchase agreement entered
29 into by this state or its political subdivisions for construction shall
30 specify that no endangered wood species may be used in the construction
31 unless an exemption is granted by the director. As used in this subsection,
32 "endangered wood species" includes those listed in appendix I of the
33 convention on international trade in endangered species of wild flora and
34 fauna.

35 ~~J.~~ K. All bonds given by a contractor and surety pursuant to the
36 provisions of this article, regardless of their actual form, will be deemed
37 by law to be the form required and set forth in this article and no other.

38 ~~K.~~ L. Any building, structure, addition or alteration may be
39 constructed without complying with this article if the construction,
40 including construction of buildings or structures on public or private
41 property, is required as a condition of development of private property and
42 is authorized by section 9-463.01 or 11-806.01. For the purposes of this
43 subsection, building does not include police, fire, school, library, or other
44 public buildings.

1 ~~t~~. M. Notwithstanding section 34-221, any agent may enter into a
2 guaranteed energy cost savings contract with a qualified provider, as those
3 terms are defined in section 15-213.01, for the purchase of energy cost
4 savings measures without complying with this article and may procure a
5 guaranteed energy cost savings contract through the competitive sealed
6 proposal process prescribed in title 41, chapter 23, article 3 or any similar
7 competitive proposal process adopted by the agent as long as the agent
8 follows any additional requirements set forth in section 15-213.01.

9 Sec. 2. Section 34-610, Arizona Revised Statutes, is amended to read:

10 34-610. Accounting standards; statutory applicability

11 A. Any construction by a county pursuant to this chapter shall comply
12 with the uniform accounting system prescribed for counties by the auditor
13 general pursuant to section 41-1279.21. Any construction by a city or a town
14 pursuant to this chapter shall comply with generally accepted accounting
15 principles.

16 B. Any building, structure, addition or alteration may be constructed
17 without complying with this chapter if the construction, including
18 construction of buildings or structures on public or private property, is
19 required as a condition of development of private property and is authorized
20 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
21 building does not include police, fire, school, library or other public
22 buildings.

23 C. Sections 34-102, 34-103 and 34-104, section 34-201, subsections A
24 through ~~H, J~~ and I, K AND L and sections 34-202, 34-203, 34-221, 34-222,
25 34-223 and 34-224 do not apply to procurement by an agent of
26 construction-manager-at-risk construction services, design-build construction
27 services and job-order-contracting construction services.

28 D. Section 34-201, subsections ~~f~~ J and ~~t~~ M and sections 34-225 and
29 34-226 apply to procurement by an agent of construction-manager-at-risk
30 construction services, design-build construction services and
31 job-order-contracting construction services.

APPROVED BY THE GOVERNOR APRIL 9, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2001.

Passed the House February 28, 2001,

Passed the Senate April 2, 2001,

by the following vote: 59 Ayes,

by the following vote: 27 Ayes,

0 Nays, 1 Not Voting

2 Nays, 1 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

3 day of April, 2001,

at 12:35 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 4 day of

April, 2001,

at 11:58 o'clock A M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 9 day of April, 2001,

at 4:33 o'clock P M.

[Signature]
Secretary of State

H.B. 2355